

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

**Comments of the  
Public Service Commission of Wisconsin**

The Public Service Commission of Wisconsin (“PSCW”) respectfully submits these comments in response to the *Public Notice* released on November 5, 2002, by the Federal Communications Commission (“Commission”) Wireline Competition Bureau in CC Docket No. 96-45.<sup>1</sup> The *Public Notice* seeks comments by December 20, 2002 on the October 16, 2002, *Recommended Decision* of the Federal-State Joint Board on Universal Service (“Joint Board”) regarding the federal non-rural high-cost support mechanism.<sup>2</sup> In its *Recommended Decision*, the Joint Board stated:

...the Joint Board recommends that the Commission modify the non-rural high-cost support mechanism implemented in the Ninth Report and Order by adopting additional measures to induce states to ensure reasonable comparability of urban and rural rates. We also recommend that the Commission implement a supplementary rate review as a check on whether non-rural high-cost support continues to provide sufficient support to enable the states to maintain reasonably comparable rural and urban rates. In addition, we recommend continued use of statewide average costs to determine non-rural high-cost support.”<sup>3</sup>

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<sup>1</sup> *Public Notice*, CC Docket No. 96-45, DA 02-2976, released November 5, 2002.

<sup>2</sup> *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 02J-2, (*Recommended Decision*) released October 16, 2002.

<sup>3</sup> *Id.*, at para. 1.

### **Current Rates are Reasonable**

An issue that seems to underlie the debate on the high-cost support mechanisms is the matter of the reasonableness of current rates. With due respect to positions to the contrary by some other parties (including some state commissions), the PSCW believes the Telecommunications Act of 1996 (“TA 96”) intended a focus on rate changes that may develop as a result of competitive entry to the telecommunications marketplace. This perspective is supported by TA 96’s stated principle of “the preservation and advancement of universal services.”<sup>4</sup> Thus, the purpose of the universal service portion of TA 96 is to address the impacts of competition, not to set a standard for retail telephone service rates or to serve as a means to lower the existing rates already charged in some states, regardless of whether those rates have been affected by competition.

We believe that it is appropriate to address the high-cost support mechanism debate from a starting point, consistent with previous Joint Board and FCC conclusions, “that current rates generally are affordable...”<sup>5</sup>

### **A Supplemental Support Mechanism is Reasonable; Flexibility is Necessary**

The Joint Board has recommended the continued use of statewide average costs to determine the levels of non-rural high-cost support. The PSCW has noted concerns about the anomalies that using such averages may produce;<sup>6</sup> however, we recognize that this approach is likely not to be changed and further, that there are legitimate concerns about the potential

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<sup>4</sup> 47 U.S.C. § 254(b) (emphasis added)

<sup>5</sup> *Recommended Decision*, at para. 43.

<sup>6</sup> Comments of the Public Service Commission of Wisconsin, CC Docket No. 96-45, filed July 23, 1999 and March 2, 2000.

increases in the size of the universal service fund that could ensue if this statewide approach is not used.<sup>7</sup> With the use of statewide average costs however, the PSCW strongly argues that it is very appropriate and necessary to craft a supplemental support mechanism that provides states the opportunity to secure additional federal support when needed to ensure the viability of service in areas where the basic universal support programs may not be sufficient. As the PSCW noted in comments on March 2, 2000, concerning the Wyoming Public Service Commission request for reconsideration of the Commission's *Ninth Report and Order*<sup>8</sup> in this matter:

The federal mechanism plays no part in meeting the sufficiency requirement when it leaves the entire burden of sufficiency on an individual state and simply assumes the state will have the resources to provide the necessary support. The question of whether the federal and state mechanisms are sufficient is unanswered because the federal plan is based on the assumption that states will be able to provide all the support.<sup>9</sup>

There are inherent differences between states in the levels of federal support that are needed. It is indisputable that the high-cost program will in fact take money from some states and give it to others. That is not a fatal flaw in the program. In fact, that is the very nature of any universal service program. States differ, telephone companies differ, and the costs of providing service differ in different locations. The driver to a universal service policy cannot be based on the parochial interests of the different parts of the nation. The mechanism that is established by the Commission must recognize the baseline needs of certain areas (via a

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<sup>7</sup> On this issue, the PSCW fully concurs with the Joint Board's position as expressed at para. 16 of the *Recommended Decision*: "The Joint Board also reaffirms that the statutory principle of sufficiency means that the non-rural high-cost support should be only as large as necessary to achieve its statutory goal. Correct fund size is essential to ensure that all consumers benefit from universal service."

<sup>8</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on reconsideration, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*).

<sup>9</sup> Comments of the Public Service Commission of Wisconsin, CC Docket No. 96-45, filed March 2, 2000.

statewide average cost metric) but must then be flexible enough to consider and respond to those circumstances where there are extraordinary needs.

While we acknowledge that some parties are critical and skeptical about infusing flexibility into the program, flexibility is necessary as it is not possible to predict at this time the nature and extent of the types of impacts on rates and affordability that competition may spur. As stated above, universal service support should address the impacts of competition. Although years have passed since the adoption of TA 96, a significant competitive presence, especially in the residential market, has been seen only in the most recent years.<sup>10</sup> That competitive impact has not been geographically ubiquitous or long-lived enough to unequivocally pinpoint the impact it has had on rates. The rate impacts of competition will be influenced by various matters, including competitive response by incumbent providers and the economic conditions prevailing in different areas. Consequently, there is logic, reason, and need to construct the high-cost support mechanism with flexibility to respond appropriately to varying conditions.

### **State Inducements to Assure Comparability of Rural and Urban Rates**

This matter was referred to the Joint Board because the Commission's *Ninth Report and Order* was deemed to have not adequately justified the assurance of urban and rural rate comparability. The Joint Board has evaluated the existing variation in rates. This evaluation is an important step in establishing a baseline from which to measure the future effects of competition. The Joint Board has developed a plan to induce states to ensure such comparability

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<sup>10</sup> *In the matter of Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-region InterLATA Service in the State of New York*, CC Docket No. 99-295, released December 22, 1999.

though an annual certification process. To minimize administrative burdens on the states, the Joint Board has recommended a “safe harbor” threshold so that states can avoid some filing requirements, if rates are below such threshold.

The PSCW is concerned that the ability to receive universal service support not come at a high cost due to the administrative complexity of the program. The Basic Service Rate Template and the Expanded Rate Certification Process are unquestionably steps that states will be able to perform. Going forward, we simply encourage the Commission to resist suggestions to further supplement these requirements in a way that would make the state commissions’ jobs even more time consuming.

Another concern is the actual setting of a specific benchmark rate in the *Recommended Decision* at \$30.16. Although setting this benchmark may seem initially reasonable, putting this specific rate level in the Commission’s rules leads to inevitable future problems, delays, and debates about getting it changed, if and when the underlying costs or factors used to calculate it change. Even the Joint Board was not unanimous on the use of this threshold, so getting this benchmark level adjusted in the future would seem doomed to argument and the ‘tyranny of due process’ attendant to the rule modification procedures. There is also the concern that although the \$30.16 value starts as a benchmark for safe harbor use, it eventually will come to be seen, in a pragmatic sense, as a requirement of or even as a target for local service rate levels.

As an alternative to the setting of this safe harbor rate, other approaches are possible. For instance, the PSCW compares median household income with rates to target the use of state universal service funds as a means of assuring affordability.<sup>11</sup>

The PSCW urges the Commission to look closely and critically at the establishment of any potentially inflexible and onerous requirements for determining the status of urban-rural rate comparability in each state and to consider other relevant parameters for comparison and rate indexing; e.g., household income.

### **Conclusion**

The PSCW commends the Joint Board for its efforts. We support the adoption of a supplemental support mechanism as part of the high-cost program. We believe it appropriate to address the entire high-cost support debate from the starting perspective that current rates are generally affordable. We encourage the Commission to recognize that the impacts of competition on universal service are still relatively unknown. As the Commission considers the Joint Board proposals, we respectfully ask consideration of the concerns raised above.

Dated at Madison, Wisconsin, December 19, 2002

By the Commission:

/s/ Lynda L. Dorr  
Lynda L. Dorr  
Secretary to the Commission

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<sup>11</sup> The PSCW's universal service program in Wisconsin is codified in Wis. Admin. Code ch. PSC 160. One of the programs, aimed at keeping service affordable to customers in high-cost areas of the state, is the high-rate assistance credits program (see Wis. Admin. Code § PSC 160.13). This program provides universal service support to eligible telecommunications carriers so they keep rates charged to customers below a threshold level. That threshold in the rules is tied to median household income by county. The rule compares this median household income number (which is updated over time) with a rate level that includes the local rate, the federal subscriber line charge and some usage (including some intraLATA toll to account for difference in local calling areas).